

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 203

PURPOSE AND DEFINITIONS

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§11-203-1 Purpose of chapter; statement of policy. The purpose of this chapter is to set forth the fundamental character of the system of personnel administration governed by these rules, consistent with merit principles. It is also the purpose of this chapter to build a career service in government free from coercive political influences to render impartial service at all times according to the dictates of laws. The system shall be administered in accordance with equal employment; impartial selection of individuals for public service; incentives for competent employees to encourage continuous improvement to achieve superior performance; reasonable job security for competent employees and discharge of unnecessary or inefficient employees; equal pay for equal work in accordance with section

76-1(5), Hawaii Revised Statutes, and harmonious and cooperative relations between government and its employees. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 91-2)

§11-203-2 Applicability of rules. (a) These rules shall apply to the merit system, and shall include all positions in the executive branch of the County except as specifically exempted therefrom by or pursuant to statute or the director in accordance with section 76-77, Hawaii Revised Statutes, as amended. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 91-2)

§11-203-3 General responsibilities of departments.

(a) The head of each department shall be responsible for personnel management within each department and shall provide for the cooperation of the department with the department of personnel services in the administration of personnel matters.

(b) Authority for the administration of departmental personnel matters may be delegated to those officials responsible for planning, directing, and supervising the work of others to the extent compatible with economical and efficient administration. The exercise of the authority shall be subject to policies, rules, regulations, and standards established by the head of the department and the department of personnel services.

(c) Each employing department shall be responsible for establishing and maintaining written personnel policies which conform to the applicable laws, rules, regulations, policies, and standards of the merit system. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-12, 76-17, 91-2)

§11-203-4 Reporting personnel information. Each department shall report personnel information to the director as the director deems necessary as to matters within the director's jurisdiction. The information shall be supplied at the time and manner as the director prescribes. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-12, 76-17, 91-2)

§11-203-5 Authority to investigate. The director may conduct investigations to secure enforcement of chapter 76, Hawaii Revised Statutes, and other pertinent portions of law and the rules governing merit system employment. This may include investigations into the qualifications and suitability of applicants for positions in the merit system. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-12, 76-13, 91-2)

§11-203-6 Equal employment opportunity. There shall be equal opportunity for all in compliance with all laws prohibiting discrimination. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-1, 91-2)

§11-203-7 Delegation of authority. The director may delegate to departments authority to act in personnel matters in compliance with policies, rules, regulations, and standards issued by the director. The delegation may be withdrawn at any time as determined by the director. [Eff 12/23/02] (Auth: HRS §§ 76-5, 76-17, 76-71) (Imp: HRS §§76-17, 91-2)

§11-203-8 Definitions. Unless otherwise indicated by the context, words used in these rules

are understood to have the following special meanings:

"Administrative review" means a re-evaluation of an eligibility rating or classification action in accordance with the provisions set forth in these rules.

"Agency" means each county board, commission, department, or officer authorized by law to make rules and regulations or to adjudicate contested cases, except those in the legislative branch.

"Allocation" means the placement of a position in a specific class on the basis of its duties, responsibilities, and qualification requirements.

"Appointing authority" means the head of a department in whom is vested the power of appointment and dismissal; which term includes subordinates to whom the department head has specifically delegated authority for personnel management functions.

"Apprenticeship" means a comprehensive, formal program for training a learner for a specialized trade or craft under the full responsibility of the employer.

"Assembled examination" means an examination for which applicants are required to assemble or be physically present at appointed times and places.

"Attorney general" means the attorney general of the State of Hawaii.

"Basic compensation or basic rate of pay" means the hourly, daily, monthly, or annual rate of pay used to determine an employee's lawful compensation in accordance with appropriate salary schedules and applicable rules. The rate of pay shall not include additional or extra compensation granted such as, but not limited to, differentials for overtime, stand-by duty, temporary unusual work hazards, compression differentials, temporary differentials, and shortage differentials.

"Calendar day" or "day" means a period which begins at midnight and ends twenty-four hours later at midnight.

"Certificate of eligibles" means the official document through which eligibles are referred for employment consideration.

"Certification" means the process whereby the names of qualified persons on the eligible lists are referred to the appointing authority.

"Chair" means the chairperson of the civil service commission of the County.

"Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

"Civil service law" means chapter 76 of the Hawaii Revised Statutes, as amended. Unless the context of a specific rule clearly indicates otherwise, all terms used herein shall have the same meaning as in the civil service law.

"Civil service system" means the merit system. See merit system.

"Class specification" means the official document providing a formalized summary depicting the duties, responsibilities, level of difficulty and authority, and minimum qualification requirements of a class.

"Class" or "class of work" means all positions which are sufficiently similar with respect to their duties, responsibilities, and authority and level of difficulty that the same descriptive title may be used to describe each position allocated to the class, that the same basic requirements as to education, experience, knowledge, skill, ability, and other qualifications are applicable, and that the same pay range may be assigned.

"Classification" means the process of grouping positions into classes on the basis of substantial similarity with respect to kinds and levels of work

and qualifications required for performance and defining each grouping.

"Classification plan" means a plan in which classes are arranged in a logical and systematic order.

"Commission" means the civil service commission of the County.

"Compensation plan" means the pay plan consisting of the assignment of all classes in the classification plan to ranges in the appropriate salary schedules on the basis of relative worth.

"Compensatory time-off" means the number of hours which an employee is scheduled to be absent from work as mutually agreed to with the employee's appointing authority when such absence is credited as compensatory time-off and charged against the employee's compensatory time credit.

"Compensatory time credit" means the number of hours of credit which an employee earns for overtime work, determined on the basis of one and one-half hours for each hour of overtime work.

"Competitive examination" means an examination from which an eligible list is established. The competitive examination may be open to the public or limited to regular employees who qualify for admission.

"Competitive system" or "competitive service" means the merit system. See merit system.

"Continuous recruitment and examination announcement" means an announcement of competitive examination without a closing date for which applications are received and examinations conducted on a continual basis.

"Corporation counsel" means the corporation counsel of the County.

"County" means the County of Maui, State of Hawaii.

"County clerk" means the county clerk of the County.

"Demotion" means a movement of a regular employee from the position in which the employee last held permanent appointment to another position:

- (1) Which is assigned to a class with a lower pay range in the same salary schedule; or
- (2) Which is assigned to a class with a lower maximum rate of compensation in a different salary schedule and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Demotion to avoid layoff" means a demotion requested by a regular employee to avoid being laid-off from County service.

"Department" means the department of personnel services of the County.

"Deputy attorney general" means a deputy attorney general for the State of Hawaii.

"Deputy corporation counsel" means a deputy corporation counsel for the County.

"Deputy director" means the deputy director of the department of personnel services.

"Director" means the director of personnel services of the County or the director's designated representative.

"Disability demotion" means a demotion resulting from an employee's inability to perform the duties of the employee's position due to injury, illness or disease which was not a result of willful misconduct on the employee's part.

"Earned rating" means the rating attained as a result of a competitor's qualification or performance or both in examination without credit for the points added through veteran's preference.

"Eligible" means a person whose name is on an eligible list.

"Eligible list" means a list, also referred to as a register, of persons who have qualified for appointment to positions in a particular class.

"Emergency" means an unforeseen circumstance requiring the immediate services of an employee or employees.

"Emergency appointment" means an appointment which does not exceed ten working days and is made to fill a position in a serious emergency when it is not practicable to ascertain whether there is an eligible list from which to make a selection.

"Employee" means a person holding a civil service position in accordance with chapter 76, Hawaii Revised Statutes, unless otherwise specified.

"EM schedule" means the salary schedule created for managerial employees excluded from collective bargaining units and which provide for a minimum rate and a maximum rate and no steps within a pay range.

"Examination" means a means of measuring the qualifications of applicants for employment in given classes or positions.

"Exempt employee" means a person who is appointed to and who occupies a position exempted pursuant to section 76-77, Hawaii Revised Statutes.

"Flexible or variable hours program" means a plan which affords employees the opportunity to arrange individual work schedules according to specific guidelines and within certain time limits established by management consistent with maintaining efficient and effective delivery of services to the public.

"Hazard pay" means a pay differential for employees exposed temporarily to unusually hazardous working conditions.

"Hearing" means any proceeding governed by sections 76-14, 76-47, 91-8 and 91-9, Hawaii Revised Statutes, and other applicable statutes.

"Holiday" means the day of the week on which a legal holiday is observed pursuant to chapter 8, Hawaii Revised Statutes, as amended, and as provided by these rules.

"Honorary award" means an incentive award, other than a cash award, granted by the head of a department or mayor or both.

"HRS" means the Hawaii Revised Statutes, as amended from time to time.

"Initial appointment" means an appointment of an individual without regular status through an initial probational, limited-term, provisional or emergency appointment or temporary appointment outside the list.

"Initial probational period" means a probational period required of a person entering the county civil service to fill a permanent position.

"Intangible benefits" means improvements resulting from a suggestion or other employee contribution which cannot be expressed in terms of dollar savings.

"Interchange" means the assignment or detail of an employee to another government or private agency whose services will be of benefit either to the sending agency or receiving agency.

"Inter-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, admission to which is limited to regular employees of the County service.

"Inter-jurisdictional" means between the state executive branch and the judicial branch of the

state, or the legislative branch of the state, or any county government.

"Internship" means a developmental program that provides planned work experience which emphasizes the application of theories, principles and techniques to operating situations.

"Intra-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, admission to which is limited to regular employees of a particular County department.

"Involuntary demotion" means an action by an appointing authority demoting an employee other than for a disability, usually taken as a disciplinary measure or because an employee is unable to perform the duties of the employee's position satisfactorily.

"Layoff" means the severing of an employee's services abolishing a position because of the lack of work or funds, or other reasons outside the employee's control.

"Leave of absence without pay" or "leave without pay" means a temporary non-pay status and absence from duty granted upon the employee's request.

"Limited-term appointment" means an appointment which is made from an eligible list or through a non-competitive promotion, transfer or demotion for a specified temporary period.

"Limited-term promotion" means a promotion for a specified period of time which may be either competitive or non-competitive.

"Mayor" means the mayor of the County.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"Merit appeals board" means the civil service commission of the County.

"Merit system" means the system based on merit principles within the meaning of section 76-1, Hawaii Revised Statutes, as amended, and Article XIV, Section 1, of the Hawaii State Constitution.

"Merit principle" means the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance.

"Minimum qualification" means the minimum experience, education, licensing, and other special requirements essential for performance in a class of work or a position.

"New probationary period" means a probationary period required of a regular employee.

"Non-competitive examination" means an examination which is administered without a competitive recruitment and examination announcement, generally to evaluate the qualifications of a regular employee for an in-service change.

"Non-competitive promotion" means a promotion effectuated without use of an eligible list.

"Non-regular employee" means an employee in a civil service position, not having regular status, including but not limited to those having emergency appointments, temporary appointments outside the list, provisional appointments, limited-term appointments and probational appointments.

"Open-competitive examination announcement" means a recruiting notice announcing the acceptance of additional applications from the general public for participation in an examination for positions in a particular class.

"Open-competitive list" means a list of persons who have been found qualified by an open-competitive examination for appointment in a particular class.

"Overtime work" means the number of authorized hours worked in excess of eight hours per day or

forty straight time hours per week or as otherwise specified by law or these rules.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as a right to be admitted as a party in a proceeding.

"Pay range" means the group of salary rates from minimum to maximum to which a class may be assigned as set forth in each salary schedule. The maximum rate in the pay range determines whether another pay range is higher or lower.

"Performance judge" means a person serving as the final arbiter in hearing appeals from employees who have been released because of poor job performance. In the case of civil service employees excluded from collective bargaining, it shall mean the civil service commission.

"Permanent position" means a position without time limitation and which has been properly established through the executive process.

"Perquisites" means those things furnished or services rendered to an employee by the county government which have value to the employee by reducing the employee's personal expenses.

"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than governmental agencies.

"Position" means a specific job, whether occupied or vacant, consisting of all the duties and responsibilities assigned or delegated by competent authority, requiring the full or part-time employment of one person.

"Position description" means an official written statement approved by the appointing authority of the major duties and responsibilities, organizational relationships and knowledge, skills and abilities required of a position.

"Presiding officer" with respect to proceedings, means the chair, and includes any member of the

commission designated as such, or such other persons authorized by law to conduct hearings.

"Pricing" means the process of assigning classes to pay ranges in proper relationship to one another.

"Probationary appointment" means an appointment which is made from a list of eligibles, or through a non-competitive action, to fill a permanent position.

"Probational period" means a period of not less than six months and not more than one year which serves as the final test of an employee's qualifications for the position in which employed.

"Probational promotion" means a promotion which may be either competitive or non-competitive, requires a new probational period, and entitles the employee to earn regular status in the position upon successful completion of the new probational period.

"Proceedings" means the director's record of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the director's jurisdiction, initiated by a filing or submittal or request or a director's notice or order. It shall include proceedings involving the adoption, amendment or repeal of any rule of the director, whether initiated by director order or notice or by petition of an interested person.

"Promotion" means a movement of a regular employee from the position in which the employee last held permanent appointment to another position:

- (1) Which is assigned to a class with a higher pay range in the same salary schedule; or
- (2) Which is assigned to a class with a higher maximum rate of compensation in a different salary schedule and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be

deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Promotional list" means a list of regular employees who have been found qualified by a promotional examination for appointment in a particular class.

"Provisional appointment" means an appointment which is made pending establishment of an appropriate eligible list, but only when required to prevent stoppage of essential public business.

"Rating" means the score or measure of performance of an applicant in an examination.

"Reallocation" means the movement of a position from one class to another class on the basis of the specific duties, level of difficulty and authority, responsibilities, and qualification requirements.

"Reallocation downward" means the reallocation of a position:

- (1) To a class assigned to a lower pay range in the same salary schedule; or
- (2) To a class in another salary schedule with a lower maximum rate of compensation and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Reallocation upward" means the reallocation of a position:

- (1) To a class assigned to a higher pay range in the same salary schedule; or
- (2) To a class assigned to another salary schedule with a higher maximum rate of compensation and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Recruitment" means the process of locating applicants for employment.

"Re-employment list" means a list of eligibles comprised of former regular or current employees or both of the County civil service who meet requirements or conditions prescribed by law or these regulations.

"Registration" means a method of recruitment and certification for unskilled classes of work where names of all eligibles are referred to the appointing authority.

"Regular employee" means an employee who has been appointed to a position in the civil service in accordance with chapter 76, Hawaii Revised Statutes, and who has successfully completed the employee's initial probational period, or as provided by statute.

"Regular status" means the status and rights enjoyed by an employee upon satisfactory completion

of the employee's initial probational period or as provided by statute.

"Related class" means a class which requires substantially similar knowledge, skills and abilities as another class.

"Related series" means a series of classes which requires substantially similar knowledge, skills and abilities as another series.

"Repricing" means the reassignment of classes from one pay range to another.

"Resignation" means an action by an employee severing the employee's employment relationship.

"Resume" means a synopsis of a person's work history and other pertinent information not filled on an approved application form.

"Rule" means any statement of the director constituting a rule as defined in section 91-1, Hawaii Revised Statutes.

"Salary schedule" means a table of pay rates and ranges.

"Satisfactory service" means the performance of the duties and responsibilities of a position in a satisfactory manner.

"Select priority list" means a list composed of:

- (1) Any former employee who has been retired for service-connected occupational disabilities, who is not totally and permanently incapacitated from performing service, and who has requested re-employment in classes for which the former employee meets minimum qualifications; or
- (2) An employee covered by section 386-142, Hawaii Revised Statutes; or
- (3) As otherwise provided by law.

"Selective certification" means the process by which certification is limited to those persons possessing knowledge, skills, abilities and other

characteristics deemed critical to the successful performance of the work of a specific position.

"Series of classes" means classes similar as to subject matter of work, but differing in level of difficulty, responsibility, and qualifications required.

"Service year" means satisfactory service rendered by an employee during a prescribed work year of twelve months as provided for in these rules.

"Shift work" means an operation which requires the scheduling of two or more eight-hour workday, with different starting times in the same calendar day, to perform the same or related work. A work schedule of flexible or variable hours shall not be considered shift work.

"Sick leave" means a leave of absence with pay authorized by law because of a sickness suffered by the employee.

"Sick leave allowance" means the total number of working hours of sick leave credit of an employee.

"Sickness" means, for sick leave purposes, any physical or mental disability not willfully or intentionally provoked by the employee, preventing the performance of the employee's regular or usual duties but excluding physical or mental disabilities suffered by the employee while gainfully performing work other than for the County of Maui.

"Split shift" means situation where an employee's scheduled workday is divided into two or more portions by off duty periods other than meal time.

"Standby duty" means an assignment of an employee by competent authority to remain at home or at any other designated place for a specific period for the purpose of responding to calls for immediate service after the employee's normal hours of work or on the employee's scheduled day off.

"State" means the State of Hawaii.

"Students" means persons who are enrolled or who have been accepted for enrollment on a full-time basis as resident students (as distinguished from a correspondence school student) of a secondary school or educational institution of higher learning.

"Suitability" means fitness for employment after consideration of such factors as health, character and employment record.

"Tangible benefits" means savings resulting from a suggestion or other employee contribution which may be expressed in dollar savings.

"Temporary unusually hazardous conditions" means conditions that temporarily expose employees to hazards that exceed the normal expectations of an occupational specialty and where, in the likelihood of injury, the nature or extent of the injury would be severe or most severe.

"Temporary assignment" means the assignment by a competent authority and the assumption, without a formal change in position, of all or a major portion of the significant duties and responsibilities of another position.

"Termination" means the severing of an employee's employment with an employer. It may be at the employee's initiative or that of the employer.

"Transfer" means a movement of a regular employee from the position in which the employee last held permanent appointment to another position which is assigned to a class:

- (1) With the same maximum rate of compensation;
or
- (2) On a different salary schedule:
 - (A) With a higher maximum rate of compensation, and the dollar difference between the two maximum rates is less than or equal to the dollar difference between the minimum and second step of the former pay range; or

(B) With a lower maximum rate of compensation, and the dollar difference between the two maximum rates is less than or equal to the dollar difference between the minimum and second step of the former pay range provided that a rate of five percent more than the minimum rate of the range shall be deemed equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Unassembled examination" means an examination in which applicants are not assembled or required to be physically present for a test.

"Unskilled labor classes" means classes of positions for which the major emphasis in terms of minimum qualification requirements is that of good physical health and strength, willingness to perform menial tasks and ability to follow instructions.

"Vacation" means a leave of absence with pay authorized by law granted to an employee for the purpose of rest and relaxation or for urgent personal business of the employee and calculated as required by law and these rules.

"Vacation allowance" means the total number of working hours of vacation credit of an employee.

"Voluntary demotion" means a demotion requested by an employee.

"Week" means a period of seven consecutive calendar days beginning on Sunday and ending seven days later on Saturday.

"Workday" means, normally, a period of eight hours in which a full-time employee is scheduled to perform the employee's normal day's work. For

full-time employees who work more than eight hours in a day on a straight-time basis, the workday shall be the number of hours the employee is scheduled to perform the employee's normal work beginning from the time the employee reports to work and ends when the employee leaves work. For scheduling purposes, workday may begin in one day and end on the next day.

"Workweek" means a period of seven consecutive calendar days beginning on Sunday and ending seven days later on Saturday in which an employee is scheduled to perform the employee's normal work, usually in five eight-hour days. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 76-42, 76-43, 76-103) (Imp: HRS §§76-1, 76-12, 76-13, 76-15, 76-16, 76-17, 76-18, 76-27, 76-30, 76-41, 76-42, 76-43, 76-45, 76-46, 76-47, 76-71, 76-103, 78-1, 396-6, 831-2; Chapter 43, Title 38, U.S.C.)

§11-203-9 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 204

RULES OF PRACTICE AND PROCEDURE OF THE DIRECTOR

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-204-1 Authority. These rules govern practice and procedure established by the director of personnel services of the County of Maui under civil service laws, chapter 76, Hawaii Revised Statutes, as modified by chapter 89, Hawaii Revised Statutes, Hawaii Administrative Procedure Act, chapter 91, Hawaii Revised Statutes, chapter 92, Hawaii Revised Statutes, and such other related acts as may now or hereafter be administered by the director of personnel services. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §§ 91-2, 92-1)

§11-204-2 Purpose and construction of rules. (a) These rules provide for the dissemination of information in accordance with chapters 91 and 92, Hawaii Revised Statutes, and authorizes the establishment of procedures whereby any interested person may petition for the adoption, amendment or repeal of rules herein pursuant to section 91-6, Hawaii Revised Statutes, and may petition for declaratory ruling pursuant to section 91-8, Hawaii Revised Statutes, on any matter within the jurisdiction of the director of the department of personnel services of the County of Maui.

(b) The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every proceeding. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§91-2, 92-1)

§11-204-3 Limitation of jurisdiction. Where the terms of collective bargaining agreements pursuant to chapter 89, Hawaii Revised Statutes, conflict with these rules the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d), Hawaii Revised Statutes. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 89-10) (Imp: HRS §§89-10, 91-2)

§11-204-4 Procedure and terms. (a) Statutory terms. The terms used in rules promulgated by director pursuant to powers granted by statute shall have the meaning defined by such statute, unless the context otherwise specifically requires.

(b) Terms defined by rule. A rule that defines a term without express reference to the statute or to a portion thereof, defines such terms for all purposes as used both in the statutes and in these rules, unless the context otherwise specifically requires.

(c) Use of number and gender. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71)(Imp: HRS §91-2)

§11-204-5 Office of the director. (a) The office of the director is located in Wailuku, Maui, Hawaii, at the following address:

Department of Personnel Services
County of Maui
200 South High Street
Wailuku, Hawaii 96793

(b) The office hours of the department of personnel services shall be determined by the chief executive and as otherwise provided by statute or executive order.

(c) Rules relating to government records are as follows:

- (1) Files of the director. The term "government records" as used in this part is defined in section 92F-3, Hawaii Revised Statutes, and shall include all rules, written statements of policy of interpretations formulated, adopted, or used by the director, all complaints, opinions or orders, written testimony, and any other material on file in the office of the director unless accorded confidential treatment pursuant to law or the rules of the director;
- (2) Inspection of government records. All government records will be available for inspection in the office of the director,

Wailuku, Hawaii, during established office hours unless public inspection of such records is in violation of any state or federal law; provided that, except where such records are open under any rule of court, the corporation counsel may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the director, county or any governmental agency or subdivision is or may be a party, or when the inspection of such records is in violation of law and are deemed necessary for the protection of the character of any person;

- (3) The public may obtain information as to matters within the jurisdiction of the director by inquiring at:
 - (A) The office of the lieutenant governor, State of Hawaii, state capitol building, Honolulu, Hawaii, where there are, on file, all rules of the director;
 - (B) The office of the county clerk, Wailuku, Maui, Hawaii, where there are, on file, all rules of the director; or
 - (C) The department of personnel services, Wailuku, Maui, Hawaii, where there are, on file, all public records within the jurisdiction of the director;
- (4) Requests for public information, for permission to inspect government records or for copies of government records shall be handled expeditiously. Any material with respect to the director will not be released without the approval of the director, or in the director's absence, by the deputy director;
- (5) Copies of government records printed or reproduced by the department shall be given to any person requesting same and paying fees established by the director, or by law or ordinance; and
- (6) Denial of information. Any person denied the right to government information, to inspect

records or to copies of government records may apply to the office of information practices and/or the circuit court of the circuit wherein the government record is found for an order permitting the right to government information, to inspect government records, or to copies of government records. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §91-2)

SUBCHAPTER 2

FILING PROCEDURES BEFORE THE DIRECTOR

§11-204-6 Consolidation. The director may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if the director finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of business and to the ends of justice and will not unduly delay the proceedings. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-7 Filing of documents. The filing of documents shall be as follows:

- (1) All requests, petitions and other papers required to be filed with the director in any proceeding shall be filed at the office of the department of personnel services at Wailuku, Hawaii, within the time limits prescribed by law, the rules or orders of the director;
- (2) The date on which the papers are received shall be regarded as the date of filing. The director shall not be responsible for delays caused by circumstances beyond the director's control;
- (3) Petitions for amendment, adoption or repeal of rules and regulations, and declaratory rulings shall be made on forms prescribed by the director. Forms may be secured from the department of personnel services. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-8 Amendment of documents and dismissal. If any document filed in a proceeding is amended, the document shall be effective as of the date of receipt of

the amendment. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-9 Retention of documents. All documents filed with or presented to the director shall be retained in the files of the director. The director may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)]

§11-204-10 Computation of time. (a) Computing any period of time prescribed or allowed by these rules or order of the director, the following shall apply:

- (1) The day of the act, event or default, after which the designated period of time is to run, is not to be included;
- (2) The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday;
- (3) Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less; and
- (4) A half holiday shall be considered as other days and not a holiday.

(b) Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by these rules, the director, upon his own initiative, may permit the act to be done after expiration of the specified period if such delinquency is clearly shown to have been the result of excusable neglect. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-11 Service of process. (a) The director shall cause to be served all orders, notices and other papers issued by him, together with any other papers that

he is required by law to serve. All other papers shall be served by the parties filing them.

(b) Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail to the last known address.

(c) Service upon parties by mail shall be regarded as complete upon deposit in the United States mail, properly stamped and properly addressed to the parties involved. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-12 Decision of the director. All orders, opinions or rulings entered by the director in any proceeding and rules promulgated by the director shall be served upon the parties participating in the proceeding. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)]

SUBCHAPTER 3

RULEMAKING PROCEDURES OF THE DIRECTOR

§11-204-13 Initiation of rulemaking. (a) The director may, at any time on his own motion, initiate proceedings for the adoption, amendment or repeal of any rule of the director. Procedures to be followed shall be as set forth in rules and the applicable statutes.

(b) Any interested person or agency may petition the director for the adoption, amendment or repeal of any rule of the director. Petitions for rulemaking filed with the director will become matters of public record.

(c) Petitions for rulemaking shall contain:

- (1) The name, address and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A draft or the substance of proposed rule or amendment or a designation of the provisions the repeal of which is desired;
- (4) A statement of the petitioner's interest in the subject matter; and
- (5) A statement of the reasons in support of the proposed rule, amendment or repeal.

(d) The director shall, within thirty days after the filing of a petition for rulemaking, either deny the petition or initiate public rulemaking proceedings.

(e) Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings will not be considered by the director.

- (1) The director shall notify the petitioner in writing of such denial, stating the reasons therefor;
- (2) Denial of a petition shall not operate to prevent the director from acting, on its own motion, on any matter disclosed in the petition; and
- (3) Petitioner may seek a review of said denial through the circuit court pursuant to the

Administrative Procedures Act and applicable rules of court and statutes.

(f) If the director determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 11-204-24 through 11-204-29 and the applicable statutes. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-14 Notice of public hearing. (a) When, pursuant to a petition therefor or upon his own motion, the director proposes to adopt or amend a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation within the County; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the director's rulemaking proceeding. All such notices shall be published at least thirty days prior to the date set for public hearing.

(b) A notice of proposed adoption or amendment of a rule shall include:

- (1) A statement of the date, time and place where the public hearing will be held;
 - (2) Reference to the authority under which the adoption, amendment or repeal of a rule or regulation is proposed; and
 - (3) A statement of the substance of the proposed rule.
- (c) Public hearing with regard to the repeal of rules shall be in accordance with section 91-3, Hawaii Revised Statutes.

[Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-15 Conduct of hearing. (a) The public hearing for the adoption or amendment of rules shall be heard before the director. The hearing shall be conducted in such a way as to afford to interested persons and agencies a reasonable opportunity to offer

testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The director shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each such hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the director from day to day or to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the director shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the director shall prescribe.

(d) Witnesses shall, before proceeding to testify, state their name, address and whom they represent at the hearing, and shall give such information respecting their appearance as the director may request. The director shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Witnesses shall be subject to questioning by the director; cross-examination by persons or agencies shall be permitted.

(e) All interested persons or agencies will be afforded an opportunity to submit data, views or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the director for good cause.

(f) Unless otherwise specifically ordered by the director, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the director to be authentic and relevant, shall be received in evidence and made a part of the record. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-16 Director's action. The director will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action should be taken within sixty days after the final public hearing, or the expiration of any extension period for submission of written comments or recommendations. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)

§11-204-17 Emergency rulemaking.

(a) Notwithstanding the foregoing rules, if the director finds that an imminent peril to public health, safety, or ethics requires adoption, amendment or repeal of a rule upon less than twenty days notice of hearing and states in writing the reasons for such finding, the director may proceed without prior notice or hearing or upon such abbreviated notice and hearing as the director finds practicable to adopt an emergency rule.

(b) The director shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper or general circulation in the state within five days from the date of filing of the rule with the office of the county clerk. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§92-1, 92-8)

§11-204-18 Filing of rules. The director, upon adopting, amending or repealing a rule and approval by the mayor shall file certified copies thereof with the county clerk. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-4, 92-1)

§11-204-19 Taking effect of rules. (a) Each rule adopted, amended or repealed shall become effective ten days after filing with the county clerk. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule with the county clerk.

(b) An emergency rule shall become effective upon filing with the county clerk for a period of not

exceeding one hundred twenty days without renewal unless extended in compliance with the provisions of subdivisions (1) and (2) of section 91-3(a), Hawaii Revised Statutes;

- (1) The agency's finding and brief statement of the reasons therefore shall be incorporated in the rule as filed; and
- (2) The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the county within five days from the date of filing of the rule. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-4, 92-1)

§11-204-20 Publication of rules. The director shall, as soon as practicable compile, index and publish all rules adopted by the director and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-5, 92-1)

SUBCHAPTER 4

RULES APPLICABLE TO DECLARATORY RULINGS

§11-204-21 Petitions for declaratory rulings. (a) On petition of an interested person or agency, the director may issue a declaratory order as to the applicability of any rule or order of the director.

(b) The petition shall conform to the requirements of section 11-204-7. The petition shall contain:

- (1) The name, address and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) Designation of the specific provision, rule or order in question, together with a statement of the controversy or uncertainty involved;
- (4) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (5) A statement of the petitioner's position or contention; and
- (6) A memorandum of authorities, containing a full discussion of the reasons and legal authorities, in support of such position or contention.

(c) Within sixty days after the submission of a petition for declaratory ruling, the director shall either deny the petition in writing, stating the reasons for such denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 11-204-22, provided, however, that if the matter is for hearing, the director shall render his findings and decision within sixty days after the close of the hearing.

(d) The director may, without notice or hearing, dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this part. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-8, 92-1)

§11-204-22 Request for hearing. (a) Although in the usual course of disposition of a petition for declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the director may in his discretion order such a proceeding set down for hearing.

(b) Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the petitioner's request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition.

(c) To the extent that such request for a hearing is dependent upon factual assertion, the request shall be accompanied by an affidavit establishing such facts.

(d) In the event a hearing is ordered by the director, section 91-9, Hawaii Revised Statutes, shall govern the proceedings. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-9, 92-1)

§11-204-23 Applicability of order. An order disposing of a petition shall be applicable only to the factual situation described in the petition or set forth in the order. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§91-12, 92-1)

§11-204-24 Declaratory ruling on director's own motion. Notwithstanding the other provisions of this part, the director may, on his own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §§92-1)

§11-204-25 Refusal to issue declaratory order. The director may, for good cause, refuse to issue a declaratory order with specific reasons for such determination. Without limiting the generality of the foregoing, the director may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may affect the interests of the director in litigation that is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 91-2) (Imp: HRS §92-1)]

§11-204-26 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 205

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-205-1 Purpose. The purpose of this chapter is to implement a system of recruitment and selection of public officers and employees in accordance with civil service laws which will attract, select, and retain the best individuals on merit to provide competent, efficient, loyal, and ethical service to the public in accordance with the needs of the service. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-13, 76-71)

§11-205-2 Appointment through the merit system.

(a) The director shall be responsible for locating the best qualified applicants available for open-competitive examination and for determining the relative capacity and fitness of applicants.

(b) The director may establish standards with respect to age, education, training, experience, suitability, physical and mental fitness, formal testing, and other requirements which applicants must meet to be rated in examinations.

(c) A person selected for membership in the civil service shall be required to serve a probationary period in accordance with section 76-27, Hawaii Revised Statutes.

(d) The director may determine the types, duration, and conditions of other types of appointment in the merit system and may prescribe the methods for replacing persons holding these appointments.

(e) A regular status will be acquired by a probationary employee upon satisfactory completion of the probational period, provided that the director may require the serving of a new probational period.

(f) No person shall be appointed, employed, promoted or transferred in the merit system or perform the duties of any position until the person passes the examination prescribed by the director or unless

specifically exempted. [Eff 12/23/02] (Auth: HRS §§76-16, 76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-3 Discretion of appointing authority in filling vacancies. (a) An appointing authority may fill any position in the civil service by appointment from a civil service list or other means provided for by the director.

(b) An appointing authority may fill, on a temporary basis, any position for which there is a pending classification action, administrative review of classification action, classification appeal, reduction-in-force in progress, or for any other reason approved by the director. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-71, 76-13, 76-17)

SUBCHAPTER 2

RECRUITMENT

§11-205-4 Citizenship and residence. Applicants shall be residents or former residents of the state and citizens, nationals, permanent resident aliens of the United States or eligible under federal law for unrestricted employment in the United States. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS § 78-1)

§11-205-5 Announcement of recruitment and examination. As the needs of the county service require, the director shall plan and carry out recruiting programs consistent with the merit system and applicable statutes. [Eff 12/23/02] (Auth: HRS §§76-17, 76-18, 76-22.5, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 76-18, 76-22.5)

§11-205-6 Recruitment incentives. To enhance the recruitment of persons employed or appointed to critical-to-fill and labor shortage positions, appointing authorities may pay travel and transportation expenses or provide monetary incentives with the prior approval of the director in accordance with policies and procedures. [Eff 12/23/02] (Auth: HRS §76-23.5) (Imp: HRS §§76-13, 76-16, 76-23.5)

SUBCHAPTER 3

EXAMINATION

§11-205-7 Examinations. There shall be examinations for testing the fitness and ability of applicants for positions in the civil service. [Eff 12/23/02] (Auth: HRS §§76-18, 76-22.5) (Imp: HRS §76-18)

§11-205-8 Scope and character of examinations. (a) The director may consult with qualified persons in regard to the content of tests, the rating of applicants or related test matters.

(b) Each examination shall relate to those matters which will best test the relative capacity and fitness of applicants for the proper performance of the characteristic duties of the class for which the examination is held.

(c) Any accepted personnel examining technique may be used, including a verification and evaluation of education, training, and experience; tests of knowledge, skill, ability, intelligence, or aptitude; medical examinations, including pre-employment drug tests; appraisals of personal suitability; inquiry into moral character of applicants and any other matter that the director deems appropriate. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-13, 76-15, 76-71, 76-18)

§11-205-9 Disqualification of applicants. (a) The director may, for good cause, reject any application or deny any appointment.

(b) The director shall notify the applicant whose application is rejected, specifying the cause or causes for the rejection.

(c) Applications submitted to the department of personnel services shall constitute official examination records of the department of personnel services.

Accompanying documents may be returned to applicants at the discretion of the director.

(d) The director may conduct investigations to determine an applicant's or appointee's qualifications and suitability for employment in the civil service. If the investigation discloses that the applicant is ineligible for the position, the director shall take appropriate corrective action, which may include denying admittance to the examination, removing the applicant's name from the list of eligibles or terminating the appointee's appointment, or any combination thereof.

(e) An applicant may request an administrative review of an ineligible rating by presenting additional information to substantiate the request within ten calendar days following the date the ineligible notice was sent. Notwithstanding the foregoing, the certification of eligibles shall not be withheld or delayed. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 76-18, 831-2)

§11-205-10 Notification of results of examination. Each applicant who participates in an examination shall be given written notice of the applicant's test performance results. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-13, 76-71)

§11-205-11 Administrative review of examination rating. An applicant may request an administrative review of rating assigned in examination by submitting to the department in writing information to substantiate the request within ten calendar days following the date the examination notice was sent. Notwithstanding the foregoing, certification of eligibles shall not be withheld or delayed. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-12 Changes in rating. (a) Changes in rating may be made as a result of the discovery of errors in the rating, or as a result of an administrative

review. Any such changes shall be reported to the applicants.

(b) Changes in rating shall not affect a certificate already issued or invalidate an appointment already made from the eligible list where the error is the fault of the department of personnel services and not the appointee. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-13 Protection and confidentiality of materials. (a) In those circumstances in which examination materials are secured from other government jurisdictions or from private firms, or where because of continuing use of the examination materials prepared by the department of personnel services exposure would jeopardize the confidentiality of the examination questions, review of these test materials shall not be permitted.

(b) Technical material and all examination booklets used in the preparation and ratings of examinations given jointly by the department and any other organization, and examinations prepared specifically for any organization, shall remain the property of the County of Maui, department of personnel services. Such examination materials and booklets shall be destroyed when not needed for test administration or appeal purposes.

(c) All examination material relating to a particular applicant or applicants including, but not limited to, reports of character and material regarding personal suitability of the applicant shall be considered confidential information. An appointing authority or the appointing authority's authorized representative may inspect the examination papers of eligibles whose names have been certified to them for appointment. However, to preserve the confidential character and sources of information furnished and to protect individuals against dissemination of unfounded or unproved allegations, reports of character, personal suitability of applicants and other confidential information shall be held in strict confidence and will not be made available for review by the appointing authorities unless specifically authorized by the director. An appointing authority or

the appointing authority's representative shall not disclose the examination materials or their contents to any person except where privileged at law or where ordered by a court of competent jurisdiction. Except as provided herein and except where privileged at law or where ordered by a court of competent jurisdiction, an appointing authority and the appointing authority's representatives, all employees, members and representatives of any agency, members and representatives of any advisory board or commission and members of the public are forbidden to disclose, whether intentionally or negligently, any examination materials pertaining to a particular applicant or applicants. Any disclosure shall be grounds for disciplinary action including recourse to all appropriate legal remedies against the informant personally. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 92F-19, 92F-22) (Imp: HRS §§76-71, 76-13, 76-17)

SUBCHAPTER 4

CERTIFICATION

§11-205-14 Certification of eligibles. Upon receipt of a request for a list of eligibles, the director shall certify names from available lists of eligibles for each vacancy in accordance with established procedures. [Eff 12/23/02] (Auth: HRS §§76-17, 76-29, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 386-142)

§11-205-15 Selective certification. When there is no list of eligibles appropriate as a whole for certification for filling a particular position requiring distinctive or unique qualifications, the director may certify selectively the names of eligibles who are qualified for the particular position. The certification may be in the order of the eligible's current ranking, or of a new ranking as determined by the director, based upon the particular requirements of the position. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-13, 76-71)

§11-205-16 Appointing authority to contact eligibles. (a) Within sixty days from the date of the certification of eligibles, the appointing authority will contact, by phone or mail, all eligibles certified to ascertain interest in the vacant position. The appointing authority will also make every effort within said sixty days to interview all eligibles and notify those who indicated interest as to whether they were selected.

(b) The requirement to interview eligibles may be waived whenever the appointing authority has interviewed and fully assessed an eligible's qualifications for a similar position from another interview conducted during the previous six months. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-17 Suspension and removal of eligible from competitive list of eligibles; restoration to list. The director may suspend, remove or restore an eligible from certification as deemed appropriate. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-18 Cancellation of competitive eligible lists. The director may cancel an eligible list as deemed appropriate. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

SUBCHAPTER 5

NON-COMPETITIVE MOVEMENTS

§11-205-19 Transfers. Transfers shall require the prior approval of the director and the appointing authorities concerned. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-20 Exchanges. Exchanges may be granted to any employee within the civil service of the state or any other governmental jurisdiction of the United States; provided that the exchange shall require the prior approval of the director for the county and the affected department head, and in the case of any other government employee, the appropriate governmental jurisdiction director and the affected governmental jurisdiction department head. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-21 Non-competitive promotions. Promotions without a certification of eligibles may be made in accordance with procedures established by the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-22 Voluntary demotions. Voluntary demotions may be made in accordance with procedures established by the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17)

§11-205-23 Additional requirement for non-competitive movements. The director may require a person seeking non-competitive movement to qualify on a non-competitive examination if the position to which the employee seeks movement requires skills, knowledge and abilities not present in the current position. The

director shall require the employee to meet the health and physical condition requirements necessary for the

safe and efficient performance of the duties of the position. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71)
(Imp: HRS §§76-13, 76-17, 76-18, 76-71)

SUBCHAPTER 6

TYPES OF APPOINTMENTS

§11-205-24 Permanent appointment. A permanent appointment may be granted an employee under the following conditions:

- (1) Successful completion of the initial probationary period required as part of the examination process to determine the employee's fitness and ability for the position; and
- (2) Satisfying all requirements for employment prescribed by section 76-27, Hawaii Revised Statutes and the qualifications prescribed by section 78-1, Hawaii Revised Statutes.

[Eff 12/23/02] (Auth: HRS §§76-17, 76-71, 78-1) (Imp: HRS §§76-71, 76-13, 76-17, 76-27)

§11-205-25 Probationary appointment. (a) The probationary period shall be utilized as fully as possible to determine the fitness of the employee for the position.

(b) An initial probationary period shall be required when an individual who does not have regular status is appointed to a permanent civil service position, except as provided by these rules.

(c) A new probationary period shall be required of a regular employee when the employee moves to a new position with a different classification or the employee's position is reclassified.

(d) The appointing authority has the discretion to require a new probationary period.

(e) The normal duration of an initial probationary period for police officers and fire fighters is 12 months and six months for other civil service employees.

(f) The appointing authority may extend the length of any probationary period not to exceed twice the length of the original probationary period in order to properly evaluate the appointee. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 76-23, 76-27)

§11-205-26 Exempt appointment. (a) In addition to the exemptions under sections 46-33 and 76-77 of the Hawaii Revised Statutes, the director may exempt additional positions if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.

(b) The director may provide for a one time exemption from civil service recruitment procedures if the appointment to the position has a limitation date and it would be impracticable to recruit under civil service procedures because the required probationary period that is part of the examination process cannot be completed by the limitation date. [Eff 12/23/02] (Auth: HRS §§76-16, 76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-16, 76-17)

SUBCHAPTER 7

STATUS OF CIVIL SERVICE EMPLOYEES

§11-205-27 Regular status. An employee acquires regular status upon satisfactory completion of the initial probationary period or as provided by statute.

(b) An employee who acquires regular status in a position of limited duration shall have all the rights and benefits entitled with the exception of layoff rights. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 76-27)

§11-205-28 Non-regular status. An employee who does not have regular status is a non-regular employee until such time as the employee acquires regular status. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-71, 76-13, 76-17, 76-27)

§11-205-29 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 206

POSITION CLASSIFICATION,
INITIAL PRICING, AND COMPENSATION PLANS

Subchapter 1 Statement of Policy

§11-206-1 Statement of policy

Subchapter 2 Position Classification

§11-206-2 Development and maintenance of a position
classification system
§11-206-3 Establishment of standards for position
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§11-206-5 Classification of positions
§11-206-6 Departmental responsibilities for
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Subchapter 3 Initial Pricing and Compensation Plans

§11-206-7 Pricing policies
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Subchapter 4 Administrative Reviews

- §11-206-11 Administrative reviews of classification actions
- §11-206-12 Severability

SUBCHAPTER 1

STATEMENT OF POLICY

§11-206-1 Statement of policy. The purpose of this chapter is to develop and maintain a countywide system, based on job analysis, for the objective, consistent and timely classification of all civil service positions and for the reasonable and consistent assignment of classes of positions to initial pay ranges in relationship to each other so as to contribute to the attraction and retention of public employees based on merit and so as to compensate employees in equitable relationship to each other. The system so established or any portions thereof may be extended to non-civil service positions as required by law or for the good of the service. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16,) (Imp: HRS §§76-71, 76-17, 76-3, 76-13, 76-13.5, 76-16)

SUBCHAPTER 2

POSITION CLASSIFICATION

§11-206-2 Development and maintenance of a position classification system. The director shall develop and maintain one or more position classification systems which shall provide for placing positions in their appropriate classes. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-3 Establishment of standards for position classification. The director shall establish standards for the development and maintenance of the classification systems relative to position descriptions, classes, the position classification plan and other matters. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-4 Procedures for position classification. Authority to establish procedures for the development and maintenance of the position classification systems is vested with the director. Governing procedures will apply to all relevant aspects including position descriptions, authorization, supporting documents, standards of adequacy and procedures for submitting requests. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-5 Classification of positions. (a) The director shall:

- (1) Place any position subject to this rule in an appropriate class; and
- (2) Change any position from one class to another class, whenever warranted by significant change in position duties and responsibilities or class definition or to correct an error.

(b) Each position will be placed in a class consistent with the nature and level of its duties, responsibilities and qualification requirements.

(c) The director may establish standards and procedures and delegate to departments authority to place their own positions in existing classes. Post audit shall be made of departments' exercise of classification authority. The director may rescind or otherwise correct any action taken as appropriate and may withdraw the authority when he determines that continued delegation is not in the best interest of the system. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-6 Departmental responsibilities for position classification. (a) Each department shall insure that the current duties and responsibilities assigned to each of its positions are accurately reflected in an official position description. Redescriptions shall be submitted on a timely basis if significant changes in the duties and responsibilities of a position are made.

(b) Departments shall not use the classification process to evade the principles of the merit system and effect personnel changes for which other personnel processes exist. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

SUBCHAPTER 3

INITIAL PRICING AND COMPENSATION PLANS

§11-206-7 Pricing policies. (a) The white collar and blue collar compensation plans applicable to the County shall be as consistent as is practicable with the objective of achieving equal pay for equal work as provided in section 76-1, Hawaii Revised Statutes.

(b) It shall be the objective of each major plan to maintain proper relationships between classes of positions within each compensation part and within and between the County and its political jurisdictions based on objective criteria and systematic job evaluation of classes, unless it has been agreed in accordance with chapter 89, Hawaii Revised Statutes, to negotiate the repricing of classes. The development of each compensation plan shall be governed by a policy encompassing the criteria set forth in subsections (c) through (f).

(c) Salary range or wage board grade assignments for the various classes of work in each compensation part of the plan shall be set in proper relationship to one another so that like salary range or wage board grade assignments are made for comparable duties and responsibilities.

(d) Salary range or wage board grade assignments between relatable classes in each compensation part of the plan are to be set in a manner consistent with the ranking of classes from low to high in recognition of the varying complexities, difficulties, and nature of responsibilities.

(e) The initial pricing of classes shall not be influenced by employee benefit considerations, night shift and other similar working condition differentials which are separate and distinct parts of pay administration, except where such benefits are considered in the pricing of the classes.

(f) Due consideration shall be given to the financial condition of government. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-8 Determination of white and blue collar classes. (a) All classes of positions which perform work in recognized trades or crafts or other skilled mechanical crafts or unskilled, semi-skilled, or skilled manual labor occupations, including positions of inspectors and supervisors having trades, crafts or laboring experience and knowledge as the paramount requirement shall be included in the blue collar compensation plan. All other classes of positions shall be included in the white collar compensation plan. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-9 Appeal on initial pricing of classes. Any person who has standing to appeal an initial pricing may file an appeal to the commission to determine the initial pricing of the person's class. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-10 Commission ruling on initial pricing appeals. (a) The commission shall report adjustments to the director for notification to departments and agencies and other jurisdictions for amendment to the compensation plans.

(b) The effective date on initial pricing appeals where the decisions are in favor of the appellants shall be retroactive to the effective date of the action of the director. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

SUBCHAPTER 4

ADMINISTRATIVE REVIEWS

§11-206-11 Administrative reviews of classification actions. (a) An administrative review consists of a reevaluation of a classification action and is therefore confined to the duties and responsibilities assigned to the position at the time the description was prepared and which were the basis for the classification and/or initial pricing action. Subsequent changes in duties and responsibilities cannot be the basis for a request for administrative review but must be reported on a redescription and submitted for another classification and/or initial pricing action.

(b) A request for an administrative review may be made by an incumbent of the position or the head of the department in which the position is located. The incumbent or the department head may have a representative submit the request on their behalf.

(c) The director shall take any action deemed appropriate, which may include rescinding the earlier action and taking a different classification and/or initial pricing action. The affected department shall be notified of the action taken.

(d) The director shall promulgate procedures to carry out the provisions of this section. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-3, 76-16) (Imp: HRS §§76-71, 76-17, 76-13, 76-13.5, 76-16)

§11-206-12 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 207

EXEMPT SERVICE

§11-207-1 General provisions
§11-207-2 Authority to exempt
§11-207-3 Severability

§11-207-1 General provisions. (a) The exempt service consists of those positions, and persons in these positions, and persons providing personal services which are by statutes excepted from all or part of the provisions of the civil service laws of the State.

(b) All positions and persons in the exempt service are excluded from the requirements of the civil service recruitment procedures and from membership in the civil service.

(c) Except as provided by statutes, the requirements of position classification and compensation may not be applicable.

(d) Employees shall meet the citizenship and state residency requirements as provided by section 78-1, Hawaii Revised Statutes. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: §§76-77, 78-1)

§11-207-2 Authority to exempt. (a) The director shall exempt positions or personal services in accordance with statutes upon finding that the conditions and requirements of the statutes are met.

(b) The director may establish standards and procedures for the exemption of positions.

(c) The director may revoke, as provided by statutes, a previously authorized exemption when the particular position or services no longer meet the

criteria or conditions for exemption. The retention and compensation of incumbents affected by such revocation shall be in accordance with statutes or the applicable collective bargaining agreement. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-16) (Imp: §§76-77, 76-16)

§11-207-3 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 208

PAY ADMINISTRATION

§11-208-1	General pay provisions
§11-208-2	Other compensation adjustments
§11-208-3	Pay actions related to appointments
§11-208-4	Temporary assignment
§11-208-5	Pay actions related to reallocation of positions
§11-208-6	Pay actions related to repricing of classes
§11-208-7	Temporary differential pay
§11-208-8	Pay actions related to changes in bargaining unit assignment
§11-208-9	Pay actions related to indebtedness to the government
§11-208-10	Conflict with collective bargaining agreement
§11-208-11	Severability

§11-208-1 General pay provisions. (a) This chapter applies to each officer and employee in positions covered by the provisions of chapter 76, Hawaii Revised Statutes.

(b) When the effective dates of more than one personnel action coincide, pay adjustments shall be made in the following order:

- (1) Negotiated wage increase or wage increase granted by an executive order;
- (2) Changeover to a new pay schedule;
- (3) Repricing;
- (4) Promotion;
- (5) Reallocation;
- (6) Other personnel actions.

(c) A leave of absence without pay shall end upon the day before the first working day an employee properly reports for duty, and an employee shall be entitled to receive compensation as of the first working day the employee properly reports for duty. Each calendar day from the beginning to the end of an employee's leave of absence without pay shall be charged as leave without pay; provided that, an employee who is granted a leave of absence without pay and who returns to duty after being absent from work for only one working day or less shall be charged for one day of leave of absence without pay or less, even though one or more scheduled or normal non-working days or a holiday may have preceded the employee's return to duty.

(d) A new hire shall be compensated for services rendered as of the first day the employee reports to duty.

(e) An employee who leaves the service without having worked on all scheduled working days for that month shall be compensated up to the employee's last day of work.

(f) An employee who leaves the service after having worked on all scheduled working days for that month shall receive a full month's compensation.

(g) An employee who suffers a disabling personal injury arising out of and in the course of employment, except for an injury caused by the employee's negligence, wilful intention to injure the employee or others, or by the employee's intoxication or because of the influence of a non-prescribed controlled substance, shall be credited for a full day's work on the day of the injury regardless of the time the employee is injured.

(h) An employee who initially was properly compensated following a promotion, the adoption of a new pay schedule, a temporary assignment, pricing or repricing, or any other personnel action affecting pay, shall not be required to make reimbursement when it is found subsequently that an overpayment in salary occurred due to the retroactive feature of a position classification action. However, the proper pay adjustment shall be made as of the first pay period following the date of notice of action by the director.

(i) The service anniversary date shall be as follows:

(1) An employee's service anniversary date shall not be affected by a promotion, transfer, reallocation of the employee's position, inter-jurisdictional movement, and demotions except for involuntary demotion, in which case the service anniversary date may be changed at the discretion of the appointing authority to the effective date of the demotion; and

(2) The service anniversary date shall be advanced for periods of suspensions, unauthorized absences, and authorized leaves without pay for reasons other than those deemed to be creditable in accordance with applicable executive orders or collective bargaining agreement.

(j) If an employee with a compression differential or a temporary differential receives an upward pay adjustment due to a promotion, reallocation, or repricing, the reduction or termination of the differential(s) shall be made in the following order:

(1) Temporary differential;

(2) Compression differential.

[Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §§76-13)

§11-208-2 Other compensation adjustments.

Compensation adjustments not expressly provided for by these rules but necessitated by authorized personnel movements or situations relating to the administration of the state civil service shall be made by the director; provided that the adjustments are not inconsistent with the general intent and provisions of the civil service laws and rules. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-13)

§11-208-3 Pay actions related to appointments. (a)

All initial appointments shall be made at the first step of the appropriate pay range, except as may be provided by law or rules.

(b) The basic rate of pay in the higher pay range for a regular employee who is promoted shall be determined in the following manner:

- (1) If the promotion is to a different salary schedule with equal rates of compensation at the corresponding salary ranges and steps, the employee shall be compensated as follows:
 - (A) For promotions involving a movement of three or less pay ranges, the employee shall be compensated at the corresponding step in the higher pay range.
 - (B) For promotions involving a movement of more than three pay ranges, the employee shall be compensated at the step in the higher pay range which is equal to the rate for promotions involving three pay ranges. If such rate falls below the minimum step of the higher pay range, the employee shall be compensated at the minimum step.
- (2) If the promotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the higher pay range;
- (3) If the promotion is to other than a salary schedule with single rate pay ranges, or a different salary schedule with equal rates of compensation at the corresponding salary ranges and steps, the employee shall be compensated at the lowest step in the higher pay range which exceeds the employee's basic rate of pay by five per cent. If there is no step in the higher pay range which exceeds the employee's basic rate of pay by at least five per cent, the employee shall be compensated at the maximum step in the higher pay range, or at the employee's basic rate of pay, whichever is greater.

(c) A regular employee who is released from a position while serving an appointment with a limitation date or a new probationary appointment and is returned to a position the employee previously held shall be

compensated as though the employee had remained in the former position continuously.

(d) Compensation adjustments for employees who are demoted shall be made in accordance with this section.

(1) A regular employee who is granted a voluntary demotion shall be compensated as follows:

- (A) If the voluntary demotion is to a different salary schedule with equal rates of compensation at corresponding pay ranges and steps, the employee shall be compensated as follows:
 - (i) For voluntary demotions involving a movement of three (3) or less pay ranges, the employee shall be compensated at the corresponding step in the lower pay range.
 - (ii) For voluntary demotions involving a movement of more than three pay ranges, the employee shall be compensated at the step in the lower pay range which is equal to the rate for voluntary demotions involving three pay ranges. If such rate falls above the maximum step of the lower pay range, the employee shall be compensated at the maximum step of the lower pay range.
- (B) If the voluntary demotion is to other than a salary schedule with single rate pay ranges, or a different salary schedule with equal rate of compensation at corresponding pay ranges and steps, the employee shall be compensated at the highest step in the lower pay range which rate is not greater than ninety-five percent of the employee's basic rate of pay. If there is no step in the lower pay range with a rate which is not greater than ninety-five percent of the employee's basic rate of pay, the employee shall be compensated at the minimum step.

- (C) If the voluntary demotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the lower pay range. Upon return to the position in which the employee last held a permanent appointment, a regular employee who is granted a voluntary demotion on a temporary or provisional appointment basis, shall be compensated as though the employee had remained in the former position continuously.
- (2) The compensation of an employee who receives an involuntary demotion shall be reduced in the following manner:
 - (A) If the demotion is to a salary schedule with single rate pay ranges, the employee shall be compensated at the single rate in the lower pay range;
 - (B) If the demotion is to other than a salary schedule with single rate pay ranges, the employee's basic rate of pay shall be reduced to the corresponding step in the lower pay range or to any lower step deemed appropriate by the appointing authority. When there is no corresponding step in the lower pay range, the employee's basic rate of pay shall be reduced to the highest step in the lower pay range which rate is not greater than ninety-five per cent of the employee's basic rate of pay. At the discretion of the appointing authority, the employee's compensation may be further reduced to a step with a rate which is less than ninety-five per cent of the employee's existing basic rate of pay. In no event shall an employee be compensated below the minimum rate in the lower pay range. Upon release from an involuntary or disciplinary demotion, an employee shall be compensated as though

- the employee had remained in the employee's former position continuously.
- (3) A regular employee or an employee serving an initial probationary appointment who receives a disability demotion because of injuries received while performing the employee's assigned duties and responsibilities shall retain the employee's existing basic rate of pay; provided that:
- (A) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay;
 - (B) If the employee's existing basic rate of pay falls above the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay;
 - (C) If the employee's existing basic rate of pay falls below the minimum step salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable;
- (4) A regular employee who receives a disability demotion other than as a result of injuries received while performing the employee's assigned duties and responsibilities shall be compensated as provided below:
- (A) A regular employee who has fifteen or more years of service in the civil service shall retain the employee's existing basic rate of pay; provided that:
 - (i) If the employee's existing basic rate of pay falls between two steps in the lower pay range of a compressed schedule, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay.

- (ii) If the employee's existing basic rate of pay falls above the maximum step or single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay.
 - (iii) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
- (B) A regular employee with at least five years but less than fifteen years of service in the civil service shall retain the employee's existing basic rate of pay for a period beyond the effective date of the demotion as provided below:

<u>Years of service</u>	<u>Months of compensation retention</u>
5	12
6	14
7	16
8	18
9	20
10	22
11	24
12	26
13	28
14	30

- (i) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay.
- (ii) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary

- schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay;
- (iii) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
 - (C) The basic compensation of a regular employee with less than five years of service in the civil service or a regular employee whose retention period as prescribed in subparagraph (B) has expired, shall be adjusted to the highest step in the lower pay range not exceeding the employee's existing basic rate of pay.
- (5) A regular employee who is demoted to avoid being laid off or to fit into a new structure provided for in a reorganization affecting the employee's department shall continue at the same rate of pay; provided that:
- (A) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay;
 - (B) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay;
 - (C) If the employee's existing basic rate of pay falls below the minimum step or the

single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.

(e) An employee who is transferred shall continue at the employee's existing basic rate of pay; provided that:

- (1) If the employee's basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the maximum step or the single rate, as applicable. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential pay;
- (2) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable; and
- (3) If the employee's existing basic rate of pay falls between two steps of the pay range, the employee shall be compensated at the next lower step. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential pay.

(f) The compensation of a civil service employee of another jurisdiction moving to the County pursuant to chapter 5, rules of the director of personnel services, other than through an exchange, may, at the discretion of the appointing authority, be in accordance with the rules governing promotion, transfer or voluntary demotion.

(g) If a regular employee is selected through an open competitive recruitment which permits recruitment incentives as provided in section 76-23.5, Hawaii Revised Statutes, the employee may be compensated at a rate above

the first step of the class to which the employee was appointed; provided that, the amount the employee will receive is not less than the amount the employee would have received if the employee were promoted, voluntarily demoted, or transferred. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §§76-13)

§11-208-4 Temporary assignment. (a) Compensation for temporary assignment shall be allowed under any one of the following circumstances:

- (1) The incumbent of the position is temporarily not available to perform the duties of the employee's position;
- (2) The incumbent of the position is also serving on a temporary assignment; or
- (3) A vacant position is being recruited for or until the selected applicant reports to duty. The temporary assignment shall not exceed one hundred twenty working days. However, when circumstances warrant additional periods of temporary assignment, the director may grant temporary assignment beyond the initial period of one hundred twenty working days; provided that each additional period does not exceed sixty working days.

(b) Compensation for temporary assignment shall be as follows:

- (1) Except as provided in subsection (c), the basic rate of pay of an employee who performs temporary assignment involving a higher position or higher rate of pay shall be adjusted as though a promotion had been made; except that, any compression differential or temporary differential which the employee is receiving shall not be added to the basic rate of pay but shall be retained by the employee while performing the temporary assignment;
- (2) An employee who performs a temporary assignment involving a position in the same or lower rate of pay shall continue to be compensated at the employee's existing basic rate of pay, prior to the temporary assignment; provided that, if the

- employee's existing basic rate of pay falls below the minimum step the employee shall be compensated at the minimum step; and
- (3) An employee who performs a temporary assignment to a position for which an adjusted entry rate has been prescribed by the director of personnel services, and whose basic rate of pay when adjusted under paragraph (1) is below the adjusted entry rate, shall be entitled to an additional amount of compensation. The additional amount of compensation shall be the difference between the employee's basic rate of pay and the adjusted entry rate prescribed by the director of personnel services. This difference, to be referred to as a temporary assignment differential, shall not be considered as part of the employee's base pay and shall end upon the completion of the temporary assignment.
- (c) Compensation adjustments shall not be provided for the following:
- (1) An employee whose position includes assuming the duties and responsibilities of the employee's superior in the absence of the superior and which assignment is recognized in the employee's position classification and pricing; and
- (2) An employee who performs duties in accordance with the terms of a formal training agreement entered into with the employee's department head and approved by the director. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §§76-13)

§11-208-5 Pay actions related to reallocation of positions. (a) An employee occupying a position which is reallocated, whether permanently or temporarily, shall be compensated as though a promotion/demotion/transfer had been made.

(b) The compensation of an employee upon the downward reallocation of a position shall be determined in the following manner:

- (1) An employee retained in a position reallocated downward shall continue to receive the employee's existing basic rate of pay; provided that:
 - (A) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay;
 - (B) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay; and
 - (C) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable.
- (2) However, when downward reallocations are due to disciplinary, involuntary, or voluntary reasons, the employee's basic rate of pay shall be adjusted in the manner as adjustments for disciplinary, involuntary, or voluntary demotions, as applicable.
- (3) Upon return of the employee's position's original classification after a temporary reallocation upward, the employee shall be compensated at the rate the employee would have received were it not for the temporary reallocation. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §§76-13)

§11-208-6 Pay actions related to repricing of classes. (a) An employee whose position is in a class which is repriced to a higher pay range shall be compensated as though a promotion had been made.

(b) The pay rate for employees whose positions are in classes which are repriced to lower pay ranges shall be retained, provided that:

- (1) If the employee's existing basic rate of pay falls between two steps in the lower pay range, the employee shall be compensated at the next lower step and shall be eligible for temporary differential pay; or
- (2) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges in the lower pay range, the employee shall be compensated at the maximum step or the single rate, as applicable, and shall be eligible for temporary differential pay; or
- (3) If the employee's existing basic rate of pay falls below the minimum step or the single rate of a salary schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §§76-13)

§11-208-7 Temporary differential pay. (a) An employee shall be eligible for temporary differential pay in the event of a disability demotion, a demotion to avoid layoff, a demotion due to reorganization, a transfer, a reallocation, or a repricing action which results in a lower basic rate of pay. The amount of temporary differential pay shall be the difference between the employee's existing base rate of pay and the employee's new basic rate of pay.

(b) The temporary differential pay shall not be considered part of an employee's basic rate of pay.

(c) The temporary differential pay shall be reduced by an amount equal to any adjustment in the employee's basic rate of pay due to promotion, upward reallocation, or repricing upward actions. When the adjustment due to these actions is greater than or equal to the temporary differential pay, the temporary differential pay shall be terminated.

(d) When an employee with temporary differential pay is demoted or transferred, or whose position is reallocated to a class in the same or lower pay range, the temporary differential shall be continued in the new pay range. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §77-10)

§11-208-8 Pay actions related to changes in the bargaining unit assignment. Whenever a position is moved from one bargaining unit to another without a change in classification or pay range assignment, the employee occupying the position shall continue to receive the employee's existing basic rate of pay; provided that:

- (1) If the employee's existing basic rate of pay falls between two steps of the pay range, the employee shall be compensated at the next lower step. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential pay;
- (2) If the employee's existing basic rate of pay falls above the maximum step or the single rate of a salary schedule with single rate pay ranges the employee shall be compensated at the maximum step or the single rate, as applicable. An employee whose compensation is so decreased shall be entitled to retain the difference between the employee's existing basic rate of pay and the adjusted basic rate of pay, and the amount retained shall be considered as temporary differential pay;
- (3) If the employee's basic rate of pay falls below the minimum step or the single pay rate of a schedule with single rate pay ranges, the employee shall be compensated at the minimum step or the single rate, as applicable. [Eff 12/23/02] (Auth: HRS §§ 76-71, 76-17) (Imp: HRS §77-10)

§11-208-9 Pay actions related to indebtedness to the government. Salaries, wages or compensation due any officer, agent, employee or other person in the service of the County shall be in accordance with section 78-12, Hawaii Revised Statutes. [Eff 12/23/02] (Auth: HRS §78-12) (Imp: HRS §78-12)

§11-208-10 Conflict with collective bargaining agreement. Whenever there are provisions in the collective bargaining agreement that conflict with this chapter, the terms of the agreement shall prevail. [Eff 12/23/02] (Auth: HRS §89-10) (Imp: HRS §89-10)

§11-208-11 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 209

RESIGNATION, LAYOFF, AND TERMINATION

Subchapter 1 Purpose

§11-209-1 Purpose

Subchapter 2 Resignation

§11-209-2	Applicability
§11-209-3	Notice of resignation
§11-209-4	Withdrawal of resignation
§11-209-5	Resignation in good standing
§11-209-6	Resignation submitted during investigation

Subchapter 3 Layoff

§11-209-7	Applicability
§11-209-8	Notice of impending layoff
§11-209-9	Placement rights

Subchapter 4 Termination

§11-209-10	Applicability
§11-209-11	Termination of employment
§11-209-12	Severability

SUBCHAPTER 1

PURPOSE

§11-209-1 Purpose. The purpose of this chapter is to provide for orderly, uniform and fair procedures for the non-disciplinary separation of employees from the County civil service. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-27, 76-30, 76-43)

SUBCHAPTER 2

RESIGNATION

§11-209-2 Applicability. This subchapter shall apply to civil service employees unless otherwise specified. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-3 Notice of resignation. When an employee elects to separate from the County service, the employee shall notify the appointing authority through a written notice of resignation at least fourteen calendar days before the date of separation, unless the appointing authority waives these requirements. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-4 Withdrawal of resignation. A resignation is binding on the employee upon submission of the notice. It may be withdrawn only with appointing authority's consent. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-5 Resignation in good standing. A resignation shall be deemed to be in good standing when the resignation is submitted in accordance with section 11-209-3 above, and the employee is not under investigation or subject to suspension, demotion, or discharge actions at the time of the employee's separation. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-6 Resignation submitted during investigation. Whenever an employee submits a resignation while being the subject of an administrative investigation pertaining to an alleged irregularity on the employee's part, the appointing authority may:

- (1) Discontinue the investigation and accept the resignation as one in good standing, provided the requirements of section 11-209-3 have been met; or
- (2) Terminate the employee after an investigation is completed in accordance with section 11-209-11(8) if the appointing authority elects to complete the investigation. [Eff 12/23/02]
(Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

SUBCHAPTER 3

LAYOFF

§11-209-7 Applicability. This subchapter shall apply to employees not covered in the collective bargaining agreement with permanent appointments in civil service positions. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-71, 76-17, 76-43)

§11-209-8 Notice of impending layoff. When there is an impending layoff because of lack of work, need, or funds, the appointing authority shall inform the department of personnel services and the affected employee of this in writing as soon as possible. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-71, 76-17, 76-43)

§11-209-9 Placement rights. Employees shall have placement rights according to procedures established by the director. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-71, 76-17, 76-43)

SUBCHAPTER 4

TERMINATION

§11-209-10 Applicability. This subchapter shall apply to civil service employees unless otherwise specified. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-11 Termination of employment. (a) An appointing authority may terminate the services of an employee for any of, but not limited to, the following reasons:

- (1) The non-regular employee failed to qualify for probationary or permanent appointment to continue the employee's employment;
- (2) The employee does not report to work for fifteen days and fails to provide satisfactory reasons to the appointing authority within those fifteen days;
- (3) The employee does not report to work for fifteen days following the expiration of the employee's authorized leave of absence and fails to provide satisfactory reasons to the appointing authority within those fifteen days;
- (4) The employee has an infectious or contagious disease which is medically substantiated to pose a significant health or safety risk to others, and the appointing authority is unable to accommodate the employee without incurring undue financial or administrative burdens or altering basic aspects of the programs or function for which the employee was employed;
- (5) The employee affected by a layoff cannot be placed in another position;
- (6) During the employee's leave of absence, the employee accepts other employment which is contrary to the purpose of the leave;
- (7) The employee is convicted of any act, attempt, or conspiracy to overthrow the county or the federal government by force or violence;

- (8) The employee submitted a notice of resignation while under investigation or subject to suspension, demotion, or discharge action;
- (9) The disabled employee refuses placement in a suitable position;
- (10) No suitable placement can be made for a disabled employee; and
- (11) If an investigation discloses that the employee is unsuitable or not qualified for the position.

(b) Whenever an appointing authority terminates a regular employee under section (a), the regular employee shall be given a written notice of the termination. The notice shall contain the following:

- (1) The specific reasons for the termination;
- (2) The date of the termination; and
- (3) An opportunity to respond to the specific reasons for the termination prior to the date of the termination.

(c) An employee shall be considered to have terminated the employment relationship with the employer when the employee resigns; when the employee's resignation is not accepted as one in good standing pursuant to section 11-209-5; or when the employee fails to submit a written resignation.

(d) When the duration of a temporary appointment is ended, the employment relationship shall be considered to have been terminated by mutual agreement between the employee and the appointing authority. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-30)

§11-209-12 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 210

DISCIPLINE, LEAVE PENDING INVESTIGATION,
DISCHARGE, AND DEMOTION

§11-210-1 Applicability; purpose
§11-210-2 Discipline
§11-210-3 Leave pending investigation
§11-210-4 Non-disciplinary discharge
§11-210-5 Demotion
§11-210-6 Notices to the director
§11-210-7 Severability

§11-210-1 Applicability; purpose. (a) This chapter shall apply only to regular employees.

(b) This chapter is not intended to abridge or modify an appointing authority's right to discipline, suspend for investigatory reasons, demote, discharge, or terminate non-regular or exempt employees. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-45, 76-46)

§11-210-2 Discipline. An appointing authority may discipline an employee for the good of the service. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §§76-45, 76-46)

§11-210-3 Leave pending investigation. (a) An employee may be placed on administrative leave with or without pay pending an investigation for up to thirty days if the appointing authority believes that the retention of the employee at the work site is detrimental to the interests of the County.

(b) A leave pending an investigation may be extended for up to an additional thirty day period, provided:

- (1) The appointing authority submits a request for the extension to the director of personnel services with an account of the status of the investigation; and
- (2) The director of personnel services approves the extension. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-45)

§11-210-4 Non-disciplinary discharge. (a) An appointing authority may discharge an employee when the appointing authority considers that the good of the service will be served thereby.

(b) If, during the period immediately after the employee has received written notice of the discharge, the appointing authority believes that the retention of the employee at the work site is detrimental to the County, general public or other employees, the appointing authority may remove the employee from service with full pay. The employee will then continue to earn full pay until the date of discharge. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-45)

§11-210-5 Demotion. (a) An appointing authority may demote an employee for nondisciplinary reasons when the appointing authority deems that the good of the service will be served thereby.

(b) An appointing authority may demote an employee for disciplinary reasons when the appointing authority deems that the good of the service will be served thereby. A demotion for disciplinary reasons shall be for a specified period of time, not to exceed a period of six months.

(c) An employee may request a demotion. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-46)

§11-210-6 Notices to the director. A copy of any notice to an employee required under this chapter shall

also be sent to the director. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS §76-28)

§11-210-7 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 211

INTERNAL COMPLAINT PROCEDURES

§11-211-1 Applicability
§11-211-2 General provisions
§11-211-3 Establishment of internal complaint procedures
§11-211-4 Conclusion of an internal complaint
§11-211-5 Appeals to the merit appeals board
§11-211-6 Severability

§11-211-1 Applicability. This chapter shall apply to applicants and employees of all positions in the County service not exempted by the provisions of section 76-77, Hawaii Revised Statutes, as amended, unless otherwise specified; provided that matters subject to the collective bargaining grievance procedures shall not be processed under this chapter. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-42) (Imp: HRS §§76-41, 76-42, 76-47)

§11-211-2 General provisions. (a) An internal complaint is defined as a complaint filed by an applicant or employee alleging that there has been a misinterpretation, misapplication, or violation of a personnel statute, rule, or written policy as to the applicant or employee.

(b) Actions taken by an appointing authority in the termination of services of a probationary employee shall not be subject to the procedure contained in this chapter. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-42) (Imp: HRS §§76-41, 76-42, 76-47)

§11-211-3 Establishment of internal complaint procedures. Each department head shall establish a uniform internal complaint procedure applicable to applicants and employees in accordance with the following guidelines:

- (1) Applicants and employees are encouraged to resolve their internal complaints informally, including the use of any administrative review process before resorting to the formal internal complaint process. A written decision shall be issued to the complainant on the outcome of any efforts to resolve the complaint informally and, if not resolved, the decision shall be accompanied by information on the filing of the formal complaint with the department or the merit appeals board, as applicable.
- (2) In presenting a complaint, the complainant shall be assured freedom from coercion, discrimination, or reprisal. The complainant shall have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint.
- (3) The department shall prepare a standardized form for use in the submission of the complaint. Complaint forms, instructions, and the complaint procedures should be easily accessible to the employees or general public, and the procedures should allow for complaints to be filed at central locations convenient to the public.
- (4) The complaint shall be filed at the first formal step within twenty days after the occurrence of the alleged misinterpretation, misapplication, or violation, or, if it concerns an alleged continuing violation, then it must be filed within twenty days after the alleged violation first became known, or should have become known to the employee involved.
- (5) The complaint shall be referred to the appropriate individual at the lowest level of the internal complaint procedure who has the authority to act on the complaint and who shall

be responsible for contacting the complainant. There shall be no more than three formal steps in the internal complaint procedure.

- (6) No more than ten working days shall elapse between initiation at each step and notification to the complainant of the decision. The complainant shall be allowed a maximum of seven working days from the date of the decision to initiate further action.
- (7) All proceedings relating to the handling of a complaint shall as far as practicable be conducted during office hours at times convenient to the complainant.
- (8) The complaint procedure for each department shall be submitted to the director for review and approval. A department may amend its complaint procedure provided that the amendment shall not be effective unless approved by the director.
- (9) Upon initiation of a formal complaint, the department head shall submit a copy of the complaint to the director. Any subsequent official correspondence related to the complaint shall be submitted to the director upon resolution of the complaint or upon request of the director. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-42) (Imp: HRS §§76-41, 76-42, 76-47)

§11-211-4 Conclusion of an internal complaint. (a) The departmental complaint procedure shall culminate in a written decision by the chief executive or the chief executive's designee, whether the director or other appropriate authority who is assigned responsibility for making the final decision on the action being complained of.

(b) The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. If the appeal is not under the jurisdiction of the merit appeals board, but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with

the appropriate agency regardless of whether the internal complaint procedures under this section are used.

(c) The mayor's disposition of an internal complaint shall be final and binding on all matters not within the jurisdiction of the merit appeals board or other administrative agency or appellate body. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-42) (Imp: HRS §§76-41, 76-42, 76-47)

§11-211-5 Appeals to the merit appeals board. Appeals to the merit appeals board shall be in accordance with sections 76-14 and 76-47, Hawaii Revised Statutes. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17, 76-42) (Imp: HRS §§76-14, 76-47)

§11-211-6 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 212
HEALTH AND SAFETY

Subchapter 1 Statement of Policy

§11-212-1 Statement of policy

Subchapter 2 Medical Standards

§11-212-2 Medical standards

Subchapter 3 Placement of Employees Who Become
Medically Non-Qualified

§11-212-3 General provisions

§11-212-4 Severability

SUBCHAPTER 1

STATEMENT OF POLICY

§11-212-1 Statement of policy. The purpose of this chapter is to ensure that applicants and employees meet the health and physical requirements for the efficient performance of their duties. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17]) (Imp: HRS §§76-17, 76-18)

SUBCHAPTER 2

MEDICAL STANDARDS

§11-212-2 Medical standards. The director is authorized to establish medical standards in order to:

- (1) Ensure that persons seeking employment in the civil service system meet the health and physical requirements necessary for the safe and efficient performance of the duties of the position and can be expected to continue to meet the health and physical requirements for a reasonable period of time; and
- (2) Ensure that each employee is able to perform the duties of the position satisfactorily and without undue hazard to the employee or others or without undue hardship on the operation of the program. [Eff 12/23/02] (Auth: HRS §§76-71, 76-17) (Imp: HRS § 76-18)

SUBCHAPTER 3

PLACEMENT OF EMPLOYEES WHO BECOME MEDICALLY NON-QUALIFIED

§11-212-3 General provisions. (a) This chapter shall apply to a regular employee who becomes medically non-qualified for the employee's present position and a non-regular employee with a work injury.

(b) The employing agency shall assure, to the extent possible, the continued employment of an employee who is disabled as a result of an injury, accident, or illness which is not attributable to negligence or misconduct on the employee's part where the employee is determined to be medically non-qualified for the employee's present position but is medically qualified as capable of performing other work.

(c) Procedures for implementation of this chapter regarding employees who become medically non-qualified shall be established by the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-71, 386-142)

§11-212-4 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 213

EMPLOYEE DEVELOPMENT

§11-213-1 Applicability
§11-213-2 Responsibilities
§11-213-3 Selection and assignment of trainees
§11-213-4 Severability

§11-213-1 Applicability. This chapter shall apply to all employees of the County. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-71)

§11-213-2 Responsibilities. The director shall initiate, develop and administer an employee development and training plan. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: Act 253, SLH 2000)

§11-213-3 Selection and assignment of trainees. Training of an employee at government expense may be authorized upon request by the appointing authority and when deemed appropriate by the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: Act 253, SLH 2000)

§11-213-4 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 2
RULES OF THE DIRECTOR OF PERSONNEL SERVICES

CHAPTER 214

EMPLOYEE RELATIONS

§11-214-1 Purpose
§11-214-2 Performance evaluation
§11-214-3 General provisions for employee awards program
§11-214-4 Service awards
§11-214-5 Incentive awards
§11-214-6 Awards program
§11-214-7 Personnel files
§11-214-8 Uniforms
§11-214-9 Severability

§11-214-1 Purpose. The purpose of this chapter is to encourage the orderly and constructive relationships between management and employees in the interest of effective personnel management and the efficient operation of the County government. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-17, 76-71, 76-1, 76-27, 76-41)

§11-214-2 Performance evaluation. The performance evaluation system may be used in accordance with the system and procedures prescribed by the director. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-1, 76-27, 76-41)

§11-214-3 General provisions for employee awards program. The head of each department shall establish and operate a plan which provides for awards in accordance with the rules, policies, standards and procedures established by the advisory committee and approved by the

mayor. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-1, 76-27, 76-41)

§11-214-4 Service awards. (a) All officers and employees of the County, including those exempted from civil service, shall be included in the service awards program. Employees of the Maui county council and county clerk's office, as well as employees of the executive branch, shall be eligible for service awards.

(b) The purpose of the service awards program is to give official recognition for long and faithful service. There shall be two categories of service awards for the purpose of this program, service anniversary awards during active employment and retirement awards.

(1) Service anniversary awards. (Length of service awards). Awards shall be made to officers and employees who have completed ten years of service with the County and at intervals of five years of creditable County service thereafter. Such awards may consist of a certificate, pin or other memento upon attainment of the employee's tenth, fifteenth and twentieth service anniversary dates. Upon completion by an employee of twenty five years of County service and every five years thereafter service anniversary awards shall consist of substantial monetary recognition - either a cash award or a monetary instrument of equivalent value such as a U.S. savings bond; and

(2) Retirement award. Awards shall be made to officers and employees upon retirement, provided they have completed fifteen years of creditable government service, the last five of which shall have been in the service of the County. Retirement awards shall consist of cash or a monetary instrument of equivalent value. Additionally symbolic awards such as suitably framed certificates of recognition may be presented to employees upon their retirement.

(c) Creditable service for the purpose of these awards shall be determined by the advisory committee.

(d) Monetary service awards provided hereunder, whether cash or otherwise, are to be funded by the respective County departments whose budgets should anticipate such expenditures.

(e) The mayor may appoint an advisory committee of County employees to assist and advise in the administration and conduct of the service awards program. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §76-17)

§11-214-5 Incentive awards. (a) All officers and employees, including those of the exempt service of the County, but not including elected officials, shall be included in the incentive awards program unless specifically excluded by these rules. A former employee of the County or a deceased employee or officer shall be eligible for an award if the contribution was made while serving as an employee or officer.

(b) The government employees' incentive awards program is established for the purpose of improving government operations and fostering excellence in public service by recognizing and rewarding employees for their constructive and creative suggestions.

(c) County-wide incentive award program. The director shall establish and promulgate necessary rules and instructions in the establishment of the County's incentive award program.

(d) Departments may establish a departmental incentive award program. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§ 76-17, 82-5)

§11-214-6 Awards program. (a) All employees of the County, including those exempted from civil service but not including elected officials, department heads, deputy department heads or executive assistants, shall be eligible for County awards. Coverage includes employees of the Maui county council and the county clerk's office, as well as employees of the executive branch.

(b) The purpose of the awards program is to recognize County employees who have contributed most to the county government by virtue of work performance, work

efficiency, self development, special acts or community services, thereby sustaining pride in work performance and fostering excellence in public service.

(c) The advisory committee shall establish the numbers and types of awards as deemed appropriate.

(d) A committee of citizens appointed by the mayor, which shall be known as the selection committee, will make the final selection from among the nominees for awards established by the advisory committee.

(e) The County shall annually recognize recipients of awards granted under this section at an appropriate awards presentation ceremony. This ceremony will be planned and conducted by the department of personnel services. The mayor or the mayor's representative will present the awards. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§ 76-17, 82-5)

§11-214-7 Personnel files. (a) All materials contained in an employee's personnel file shall be considered confidential. When not used for internal management purposes, such materials may be released in compliance with applicable federal and state laws and regulations.

(b) An employee, upon the employee's request and by appointment, shall be permitted to examine the employee's personnel file. The employee shall be given a copy of any material in the file if it is to be used in connection with a grievance or a personnel hearing.

(c) No derogatory material shall be placed in an employee's file unless a copy of the same is first provided to the employee. An employee shall be given an opportunity to submit explanatory remarks which shall be placed in the employee's file.

(d) An employee may request that any derogatory material be reviewed and removed from the employee's file after three years. The employee's department head will determine whether the material is relevant and will decide whether or not the material will be retained; provided, however, that the employee's employment record including personal history record shall not be altered and shall be retained. If the employee disagrees with the department head as to the relevancy of the material,

the employee may request that the director render a decision and the director's decision shall be binding. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§91-2, 92F-14)

§11-214-8 Uniforms. A uniform shall include those items of distinctive clothing which are required by the appointing authority. The necessary policies and practices shall be adopted by each appointing authority consistent with the uniform allowance policy promulgated by the office of the mayor. [Eff 12/23/02] (Auth: HRS §§76-17, 76-71) (Imp: HRS §§76-13)

§11-214-9 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

ADOPTED this _____ day of _____, 20____, at
_____, Maui, Hawaii.

COUNTY OF MAUI

RAYMOND Y. KOKUBUN
Director
Department of Personnel Services

JAMES H. APANA, JR.
Mayor
County of Maui

Approved this _____ day of
_____, 20____.

APPROVED AS TO
FORM AND LEGALITY:

JOHN D. KIM
Deputy Corporation Counsel
County of Maui
C:\Documents and Settings\cbbar\Desktop\directors rules (2-3-2003 final version).wpd

Received this _____ day of
_____, 20____.

ROY HIRAGA

County Clerk
County of Maui

214-7

CERTIFICATION

I, RAYMOND Y. KOKUBUN, Director, Department of Personnel Services, County of Maui, do hereby certify:

1. That the foregoing is a copy of Chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Rules of the Director of Personnel Services, pursuant to Section 91-4.1 of the Hawaii Revised Statutes, which was adopted on June 19, 2002, following a public hearing on June 19, 2002; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 13 day of May, 2002.

RAYMOND Y. KOKUBUN
Director
Department of Personnel Services